

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

ROBERT ALAN HARNESS,

Plaintiff,

v.

MAXEY CERLIANO, et al.,

Defendants.

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Case No. 6:21-cv-115-JDK-JDL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Robert Alan Harness, proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for disposition.


Before the Court is Defendants Jeff Callaway, Maxey Cerliano, Tony Monsivias, Donald Whitehead, and Luke Whitehead's motion to dismiss (Docket No. 24). On July 30, 2021, Judge Love issued a Report recommending that the Court grant Defendants' motion and dismiss Plaintiff's claims in this action with prejudice for purposes of proceeding *in forma pauperis*. Docket No. 30. A copy of this Report was sent to Plaintiff, but no objections have been received. A letter properly placed in the United States mail is presumed to reach its destination in the usual time and to actually be received by the addressee. *Faciane v. Sun Life Assurance Co. of Can.*, 931 F.3d 412, 420–21 & n.9 (5th Cir. 2019).

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 30) as the findings of this Court. The Court **GRANTS** Defendants' motion to dismiss (Docket No. 24) and **DISMISSES** Plaintiff's claims with prejudice for purposes of proceeding *in forma pauperis* for failure to state a claim upon which relief may be granted.

So **ORDERED** and **SIGNED** this **10th** day of **September, 2021**.

  
JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE